



Focus on Updating Shorelines of the State through local plans

From Ecology's Shorelands and Environmental Assistance Program

Rule amendment will defer to local shoreline master programs

Cities and counties across the state are developing comprehensive updates of their shoreline master programs (SMPs). Many of these programs have not been amended since they were first adopted in the 1970s. The Department of Ecology is providing grant funding and technical assistance to these local projects, and is responsible for reviewing and approving the updated programs.

Updated maps of "Shorelines of the State" will be a fundamental element of the new city and county SMPs. Shorelines of the State are the water bodies in each city or county covered by the shoreline program, as defined in state law (RCW 90.58).

After the Washington State Shoreline Management Act (SMA) was passed in 1971, the State Department of Ecology and local governments identified the water bodies to be covered in the shoreline master programs (SMP's), and these lists were incorporated into the state shoreline management guidelines as part of the Washington Administrative Code (WAC). Local governments included those lists in their SMPs and applied their goals, policies and development regulations to them.

Now the Department of Ecology proposes to amend its rules (WAC) to incorporate the updated mapping which shoreline communities will complete during the SMP updates. The proposed rule amendment will provide consistency of information and avoid potential legal conflicts between Ecology's current (old) rule language and updated (new) local shoreline master programs. The first comprehensive SMP updates are scheduled to be submitted to Ecology by the end of 2005, with final Ecology approval anticipated during the first half of 2006. Ecology intends to revise the current State rules before taking action on any of the proposed local SMPs.

This Focus sheet provides background information on the proposed rule revision and the new approach for updating the "Shorelines of the State".

Status and timelines

Ecology's rule-amendment process will begin in September 2005 and should be completed by mid-2006, in time for Ecology to begin approving the first updated shoreline master programs.

Frequently Asked Questions

What water bodies are required to be included in the shoreline master program?

The water bodies included in the shoreline program are defined by statute in the Shoreline Management Act, RCW 90.58. These are called "Shorelines of the State." In certain situations, cities and counties decide whether to include specific areas under the shoreline program. Shorelines of the State include:

- All marine waters.
- Streams over 20 cubic feet per second (cfs) mean annual flow.
- Surface waters other than streams more than 20 acres within their ordinary high water mark.



- Shorelands, which are lands within 200 feet of the ordinary high water mark of water bodies, or lands within 200 feet of stream floodways, or the landward extent of adjacent wetlands, whichever is greater.

In addition, the Shoreline Management Act provides local governments with discretion over shoreline jurisdiction in two areas: floodplains and critical-areas buffers. These are discussed in further detail below.

Why do the shoreline water-body maps and lists need updating in the local master programs?

Shoreline map updates will be needed for several reasons, including:

- **New information on water-body flow and size.** At the outset of the shoreline program in the 1970s, Ecology listed or mapped all known streams, lakes and wetlands qualifying as Shorelines of the State. There has been virtually no update of the official lists since then. Much-improved water-body maps and data have been developed by cities, counties, state and federal agencies over the past decades. This information will need to be incorporated into the updated SMPs. Ecology has updated information on 20 cfs points for all streams across the state. These need to be examined as part of SMP updates.
- **Alterations of the shoreline.** Naturally occurring alterations and human uses of the water and surrounding land may alter the boundary of shoreline jurisdiction, changing the ordinary high-water mark or the other physical characteristics that determine jurisdiction of the Shoreline Management Act. Examples of such alterations include permitted changes, such as land-filling and dredging, flood-control projects, and natural changes due to landslides, flooding, channel alterations or river-course changes. [See RCW 90.58.020.](#)
- **Annexations** have altered shoreline boundaries for many cities and counties – particularly since many local master programs have not had a comprehensive update for decades.
- **Local option decisions** on floodplains and critical-area buffers. The state legislature has authorized local governments to decide how much area to include within their shoreline programs in two situations:
 - ❖ **Floodplains.** Local governments have the authority to decide whether to extend SMP coverage beyond the floodway (plus 200 feet). Each local government will determine whether to include all or part of the 100-year floodplain in its updated SMP.
 - ❖ **Critical-area buffers.** Local governments may extend the shoreline jurisdiction area to accommodate buffers necessary for protecting critical-area values and functions. This local-option extension of Shoreline Management Act jurisdiction was adopted in 2003.

Does Ecology have updated maps or data on Shorelines of the State that should be used for SMP updates?

The Ecology Web site provides summaries and access to maps and reports from various sources for streams, lakes, wetlands, floodplains and floodways. Ecology has issued updated comprehensive map coverage for one type of shoreline water body: streams exceeding 20 cfs mean annual flow. Updated maps of the points where streams are calculated to exceed 20 cfs mean annual flow have been produced by the U.S. Geological Survey (USGS) under contract to Ecology.

Many new 20 cfs points are identified in headwaters areas on federal lands, since the original USGS stream flow report used by Ecology in the 1970s did not include streams above the first federal land boundary. This raises questions regarding applicability of the shoreline program within federal lands.

Are federal lands subject to shoreline program regulations? Should local governments add 20 cfs points within federal lands to SMP maps as “Shorelines of the State”?

In general, federal actions on federal lands do not require shoreline permits, even if they are conducted within the shoreline area. However, non-federal actions on shorelines within federal lands *are* generally subject to the state’s Shoreline Management Act. This can include fee ownership in-holdings (private property surrounded by national forest or other federal lands) or partial ownerships such as mining claims.

Applicability of the shoreline program within various federal land ownerships needs to be considered on a case-by-case basis. For some federal land holdings, “exclusive jurisdiction” has been invoked by the federal government. For example, in Olympic and Rainier National parks, the federal government has invoked exclusive jurisdiction over all lands and activities within the boundaries. The situation is variable with land under tribal ownership. Another type of exclusive federal status may be military installations where no non-federal activity is allowed.

For cities and counties updating their SMP maps, the general rule is: Include Shorelines of the State within federal lands in SMP maps **except** where exclusive federal or tribal jurisdiction is documented. While SMP mapping within exclusive federal jurisdiction areas will not change any legal status of the lands, it could lead to confusion regarding applicability of the SMA.

For further information on the USGS stream-flow reports and shoreline program applicability on federal lands, see the Ecology Web site at http://www.ecy.wa.gov/programs/sea/sma/st_guide/jurisdiction.

Why is a shoreline rule amendment proposed?

The amendment is needed to prevent legal confusion between the new Ecology-approved Shoreline Master Programs adopted by local governments and the outdated 1970s-era lists adopted by Ecology and included in the Washington Administrative Code (WAC). Over the next decade, Ecology will review and approve updated SMPs for nearly 250 cities and counties that will include refined and updated maps identifying local Shorelines of the State. However, there is potential for conflict because the current Ecology-adopted rules regarding Shorelines of the State will prevail until new rules (including lists and maps) replace them. The proposed rule will resolve this potential conflict. Updating Shoreline maps as part of the SMP update process also provides optimal opportunity for public review and comment.

In cities or counties where Ecology has approved an updated SMP, the revised rule will direct readers to that SMP for delineating Shorelines of the State. Otherwise, the lists of shorelines in the existing rule (WAC) will continue to apply until an SMP is updated and approved by Ecology.

Several “housekeeping” rule amendments are also proposed. Through appeals to hearings boards and courts, several sections of the existing regulation have been ruled to be out of compliance with the Shoreline Management Act or other legal requirements. Proposed revisions to address these include:

- Amend “floodway” definition to delete a reference to using FEMA’s floodway map (173-22-030(5));

- Revise the “date of filing” definition (WAC 173-27-130(6) and (7)) to conform to state law; and
- Remove Thomas Lake listing from WAC 173-20-640 to conform to case law.

Without adopting the “housecleaning” rule amendments, there could be continued non-compliance with these hearings board and court cases.

How can I stay informed about the status of this project?

Ecology maintains a Web page on rule updates at
<http://www.ecy.wa.gov/laws-rules/currentactivity.htm>.

For further information on the shoreline rule update or to be added to the mailing list affording the opportunity for review and comment on the proposed rule, contact:

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